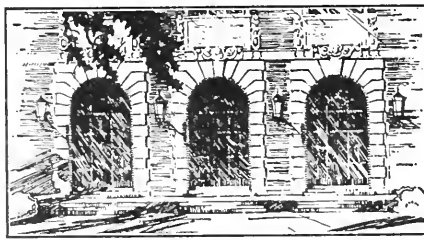


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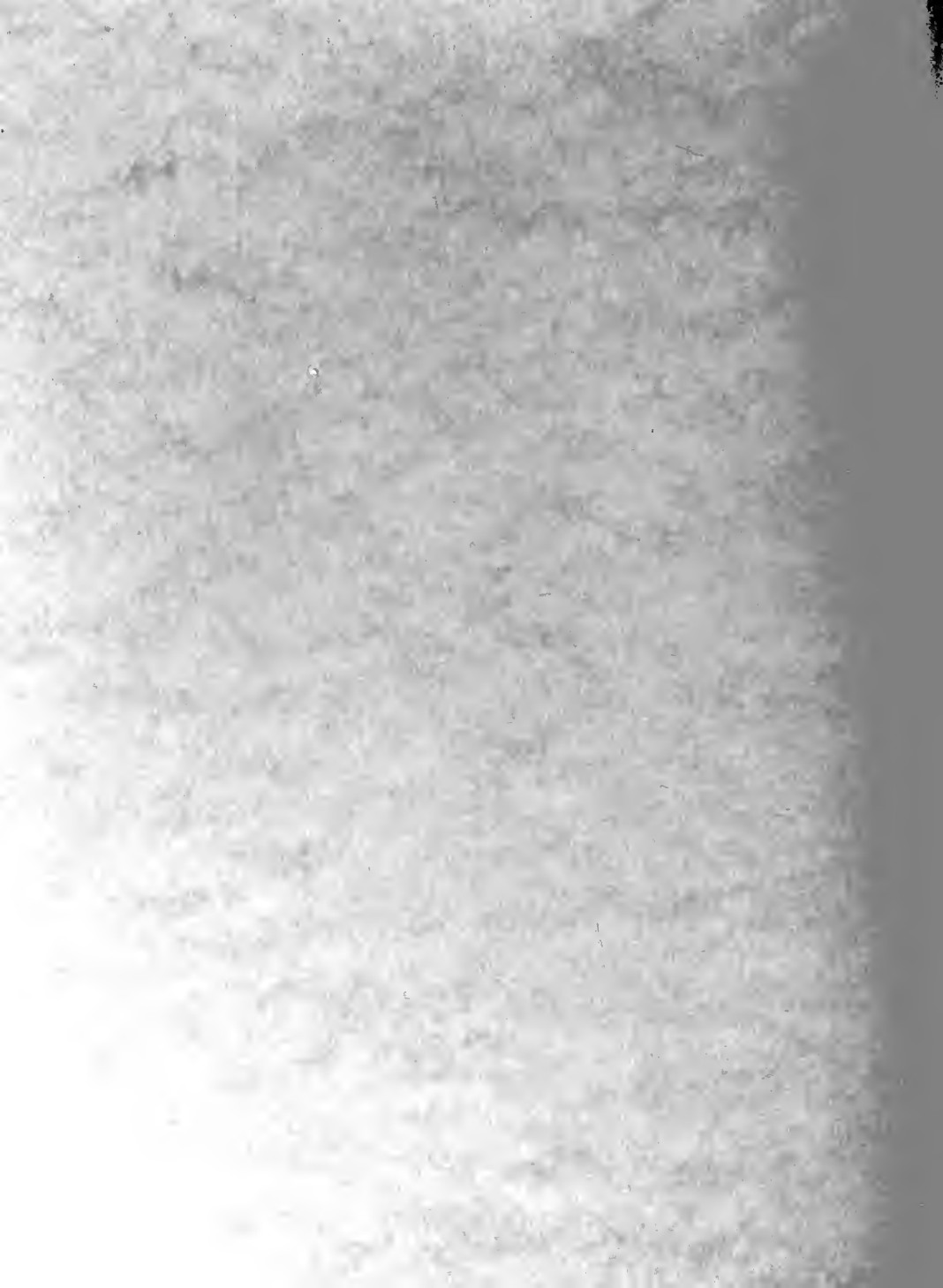
ZONING IN SUBURBIA: Keep It, Reject It or Replace It?

Ambrose Klain

Associate Professor of Regional Planning

The Pennsylvania State University

The Capitol Campus — Middletown, Pennsylvania



ZONING IN SUBURBIA: KEEP IT, REJECT IT OR REPLACE IT?

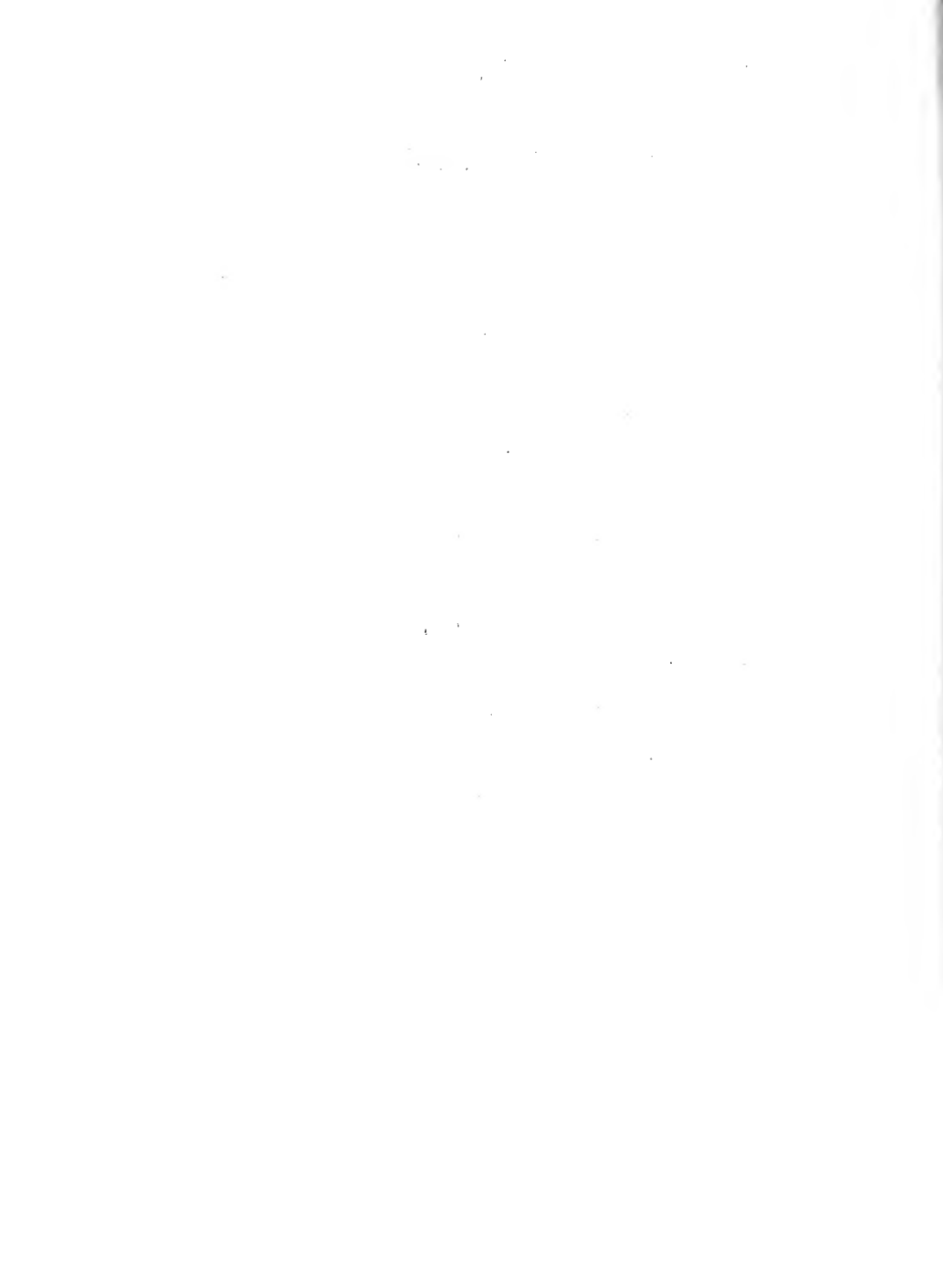
Ambrose Klain, AIP
Associate Professor of Regional Planning
The Pennsylvania State University
The Capitol Campus
Middletown, Pennsylvania

Zoning, in its evolution and its present function, reflects the impact of general social and urban changes in the nation. Zoning is a typical product of the American social, political and economic process; it is totally interrelated with key social urban issues.

Suburban zoning has been receiving a lot of attention in the last two years. The stream of articles in dailies, magazines and government publications continues without an end in sight.

The controversy and conflict centers around the restrictive and discriminatory regulations of suburban zoning. By virtue of its legal power, suburban zoning excludes, practically "zones out", black and other poor residents of the center city ghettos. Suburban large lot requirements, often half an acre up, and strict building codes exclude any development of low or moderate income housing in suburban communities.

In the past two decades we concentrated in center city ghettos all national, state and civic efforts to provide housing for low and middle-income families. In general, we did the same thing with jobs and education. It is being recognized more and more that this approach has been a failure and the funds spent have been wasted. The issue of housing, the problem intimately related to zoning, is more aggravating today than it was 20 years ago. We tried to provide low cost housing in the densely built-up ghettos where there is no more vacant land available. The undeveloped land is in the suburbs. Good schools and jobs are not found in the ghettos. Suburbia today is where new jobs, more jobs and the best jobs are available. All new



industrial parks opened in the last 20 years are located outside central cities.¹ The good schools are in the suburbs, too. One of the key causes of the "flight" of the affluent to the suburbs is the "plight" of the central city educational system.

The black and the poor are trapped in a vicious cycle. The ghetto and the wretched conditions found there are perpetuated. Low and moderate income housing (with the stigma of "the project") is built on ghetto land, again where jobs are scarce. There is no legal opportunity to develop them within suburbia's protected sanctuaries. Most of the articles dealing with "suburban zoning" suggest that opening up the suburbs to the black and poor will solve our basic national social problems.

A 1970 study² offers evidence that ghetto people in the New York Metropolitan Region cannot take advantage of new job opportunities in the suburbs for lack of low and middle income housing. The same trends and conditions exist all over the United States. Access to new jobs and housing is blocked as a result of the growing geographic separation of population by race and income.

How then can zoning be adopted and transformed to accomplish desired social changes? The right of the municipality to control the uses of land is based on its police power. This is, in fact, delegated to all municipalities in all states through zoning and enabling acts by the state constitution. For all practical purposes the State Constitutions are being used to prevent black and poor citizens from entering suburbs.

ZONING AND THE URBANIST PROFESSIONS

Urbanists began to question the value of zoning as a beneficial urban

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instrument in the early 1960's, immediately after the first fires flared in the American central cities. John Reys of Cornell University started the attack on zoning as a social instrument in 1964 with his classic Requiem for Zoning³. He called for "legal euthanasia, a respectful requiem and search of a new legislative substitute" which should replace zoning as a land use policy instrument.

The New York Times stated in an article, as early as May 17, 1958⁴, that the main obstacle to federally subsidized housing (i.e. housing for low-income families) in suburban areas is restrictive zoning. An early indictment of zoning in suburbia was published in October 1966 under the provocative title "Invitation to Bribery"⁵: "...and since the basic purpose of most ordinances is to protect established neighborhood's property value, they are often in conflict with broader goals..."

In Building the American City⁶, a 1968 U. S. Government publication of the President's Commission on Urban Problems, the "Balkanized American suburban municipalities" are made responsible for the dismal failure of the zoning system for: "...although the basic justification for zoning is to protect the overall public good, this often appears to be the last consideration as zoning is now practiced"⁶.

A 1968 publication of the President's Committee on Urban Housing, A Decent Home⁷, contains a strong indictment of present restrictive zoning practices in suburbia: "To overcome local impediments to development of subsidized housing, the Federal Government, subject to the Governor's veto, should be empowered to preempt local zoning ordinances which exclude the development of subsidized housing"⁷.



THE "ADVOCATE" PLANNERS AND "SUBURBAN ACTION"

The burning of American cities and the student uprising at American universities activated many urban planners at U. S. colleges.

Typical and best known among the educators within the American Institute of Planners are Paul Davidoff and his team identified as the "advocacy" planners. By 1969 the "advocacy" planner team matured into an activist group with definite aims and purposes, ready to step into battle within the public arena. Davidoff and his team launched the battle with an article in a house publication, The Newsletter of the Twentieth Century Fund.⁹ The article announced the awarding of funds to Davidoff and Gold for a study of suburban zoning practices.

The next step followed soon. Davidoff and his team presented the case to the urban profession in an article "Suburban Action: Advocate Planning in an Open Society" in the Journal of the American Institute of Planners.¹⁰ The article signifies the beginning of a new era in the urbanist professions and the end of an obsolete era; it is a professional milestone. Davidoff and Gold question the effectiveness of billions of dollars spent on rehabilitation and renewal of housing stock in America's central cities during the past 20 years. The article suggests reallocation of public and private resources. In the past we concentrated on solutions to the problems of our urban ghettos with ineffective projects such as "urban renewal areas", "model city neighborhoods" and others within the central cities. To be effective, shift of concentration must go to the suburbs where jobs, vacant land, good education and leisure time facilities are available.¹⁰ The article proposes the elimination of restrictions from suburban zoning and suggests that: "...the power of government must be used to break the land use barriers erected by suburban communities."¹⁰

THE U. S. URBANIST ESTABLISHMENT

What was the response of the urbanist community, including U. S. urbanist bureaucracy represented by the U. S. Department of Housing and Development? Should the urban planner admit that suburban housing is, in effect, restrictive? How far will he, or should he, stick out his neck?

Urban planners have always considered municipal zoning without an adopted comprehensive or general plan of the municipality a poor substitute. In most cases such zoning discouraged orderly growth and development; often in the past it has been open to abuse in a variety of ways and violated the public interest. During the past decade of the 1960's, the urban planning profession stood by (passively) while urban America suffered its greatest period of crisis. Professor Melville C. Branch expressed succinctly the urbanist profession's failure to adapt to social change in his article of August 1970:

... Has the city planning profession kept pace with these developments? Is it prepared to take the lead in making city planning truly effective? It is the thesis of this paper that the profession is not only attitudinally and intellectually unprepared, but that it has been deluding itself and its public for some time. Unless this situation changes, the city planning profession as presently constituted and trending will be discredited.¹¹

PUBLICATIONS OF THE PLANNING PROFESSIONS

Publications of the Journal of the American Institute of Planners are discussed on preceeding pages.^{8, 10} The American Society of Planning Officials updated and republished in 1970 its earlier report Exclusionary Zoning.¹² Planning, the monthly magazine of ASPO, published recently articles on the subject such as "Massachusetts Housing Law",¹⁴ another on "Restrictive Zoning",¹⁵ Stollman's powerful editorial "Zoning as an Obstacle"¹⁶ and "Pennsylvania High Court on Exclusionary Zoning".¹⁷



THE PUBLIC RESPONSE. REFLECTIONS IN THE COMMUNICATION MEDIA.

The issue of suburban zoning is no longer isolated. The battle is raging in communication media, Washington, D.C., the courts, city halls, church halls and colleges. Most titles of the articles from magazines and dailies are dramatic; so is the reporting. "The Suburbs' Resources For Attacking Their City-type Afflictions Are Bound up in a Noose"¹⁸, reported on Davidoff and Gold's Suburban Action as early as July 1969. "Battle to Open the Suburbs: New Attack on Zoning Laws" is not taken from liberal or semi-revolutionary publications; it is from a 1970 issue of U. S. News and World Report.¹ The article describes several court cases where the courts refused to allow "people to be zoned out" or ordered city housing authorities to build future low-income housing projects in the suburbs. "Suburb vs. Ghetto. The Moral Dilemma of Zoning" from a 1970 issue of The Nation¹⁹ is another article dealing with restrictive suburban zoning.

The flow of articles published in late 1969 and 1970 in leading U. S. newspapers and magazines, demonstrates the impact of Davidoff and his action. In "Can the Suburbs Be Opened?", Time Magazine describes the de-facto residential segregation in suburbia all over the nation²¹. In a recent issue, Newsweek Magazine reports action by local liberals who requested the rezoning of part of the municipality's land for multi-family low income housing in Newton, Massachusetts, a suburb of Boston.²³ Look magazine stated in a recent article that "...We have twisted zoning, which can legitimately protect residential environment from the intrusion of industry, into a discriminatory device to exclude citizens of lower income or different color"²⁴. The New York Times dealt in several articles in 1970 with the discriminatory nature of suburban zoning.²⁵ A recent issue of the Harrisburg Sunday Patriot-News called suburbia's restrictive zoning and building codes a "white noose" around the cities.²⁶

LITIGATION IN U. S. COURTS

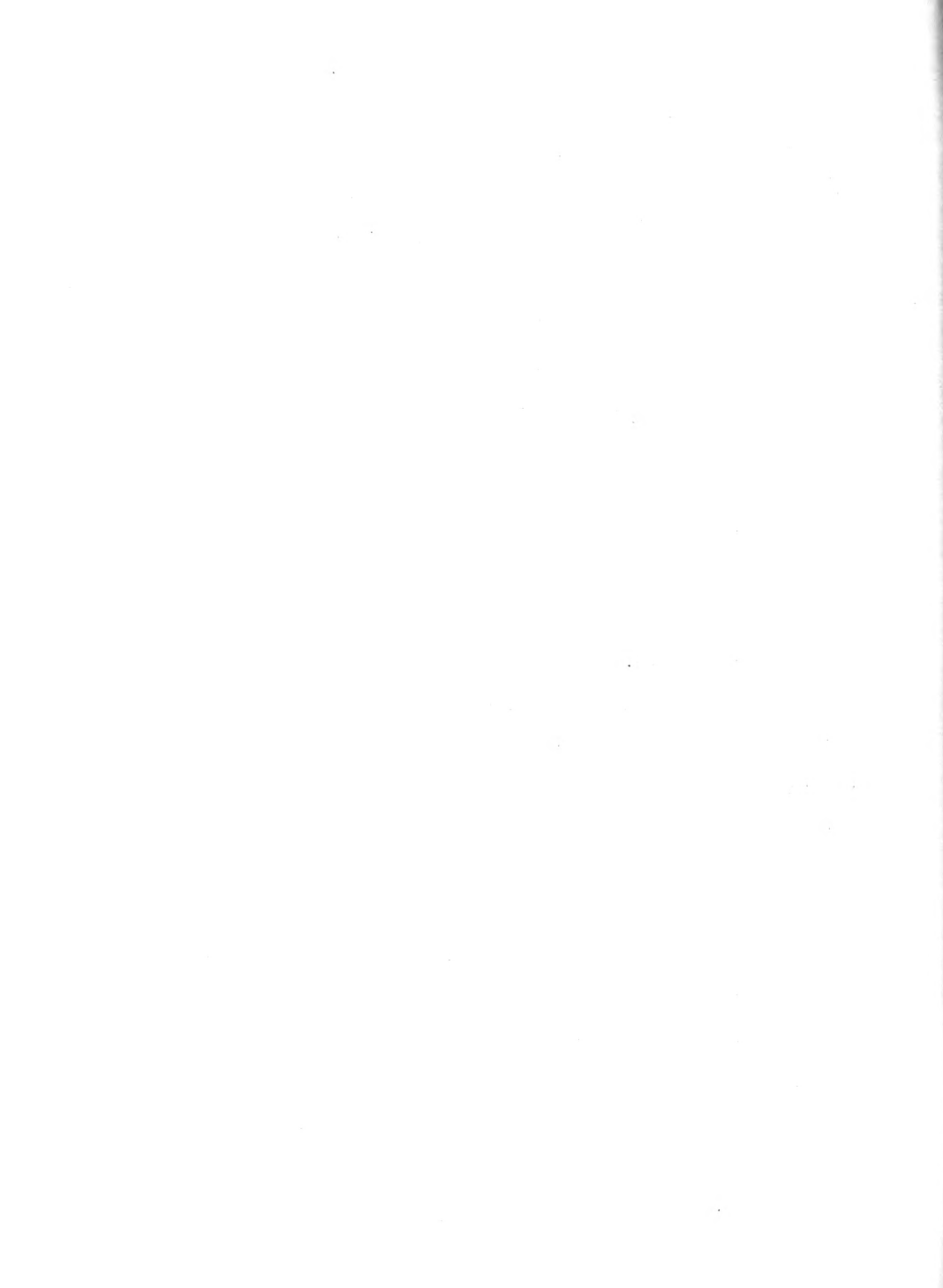
The rezoning issue achieved its first major political breakthrough with the enactment of the first housing law for "advocate zoning" by the Massachusetts Legislature in August 1969.²⁸ Its sub-title defines the philosophical and ideological aims by stating: "to provide for the construction of low or moderate income housing in cities and towns in which restrictions hamper such construction".²⁸ In the 50 year old history of zoning in the U.S.A., the State of Massachusetts is the first one to stipulate that it will revoke the zoning power of municipalities which abuse it against the black and the poor.

The political significance of the Act is that the principle was established to use zoning as an instrument for desired social changes and not, as the case has been before, as an instrument of social polarization and destructive separation.

Court cases attacking restrictive suburban zoning are reported from California, Illinois, Massachusetts and Pennsylvania. The California cases are brought mostly to court by Mexican-Americans who "challenged the basic constitutionality of zoning ordinances as vehicles for excluding the poor" as a July 1970 issue of Newsweek reported.²³

The Pennsylvania Supreme Court held in a February 1970 decision that: "...the town cannot deny the construction of multi-family housing because it will result in changing the character of the community".²⁵ This decision may be of more benefit to land speculators and private developers than to the public interest. By removing all remaining constraints to land speculation, the decision may destroy the few benefits which zoning still offers.

Miss Brook concludes in her book Exclusionary Zoning¹³ that the court cases which overruled restrictive zoning will not prevent future or cancel existing practices. Nor will the result be an increase of the supply of low



and moderate income housing. The courts are reluctant to interfere with the home rule of municipalities.¹³

In summary, our legal system offers two potential and practical avenues (currently) available for the attack against discriminative zoning practices. The first, litigation in courts, as the Davidoff via Ralph Nader approach, will have little impact. As such, it will not potentially increase the housing supply for low and moderate income families. The other approach suggested by Miss Brooks is attack through State legislatures through legal acts such as the Massachusetts Housing Act²⁸ and the proposed State of New Jersey Land Use Planning and Development Act.¹³ Peering into the crystal ball of American state legislatures, it is extremely difficult to augur for the near future the elimination of restrictive zoning practices through State mechanisms. It is hard to visualize that practical State legislators, faced with the never-ending battle for re-election, would commit political harakiri just to please mostly powerless and often voteless blacks and minorities.

THE ROLE OF THE GOVERNMENT ESTABLISHMENT

Edward J. Logue, nationally famous as Boston's "Mr. urban developer" and now executive director of the New York State Urban Development Corporation, defined the nature of the issue in Look magazine as early as 1969:

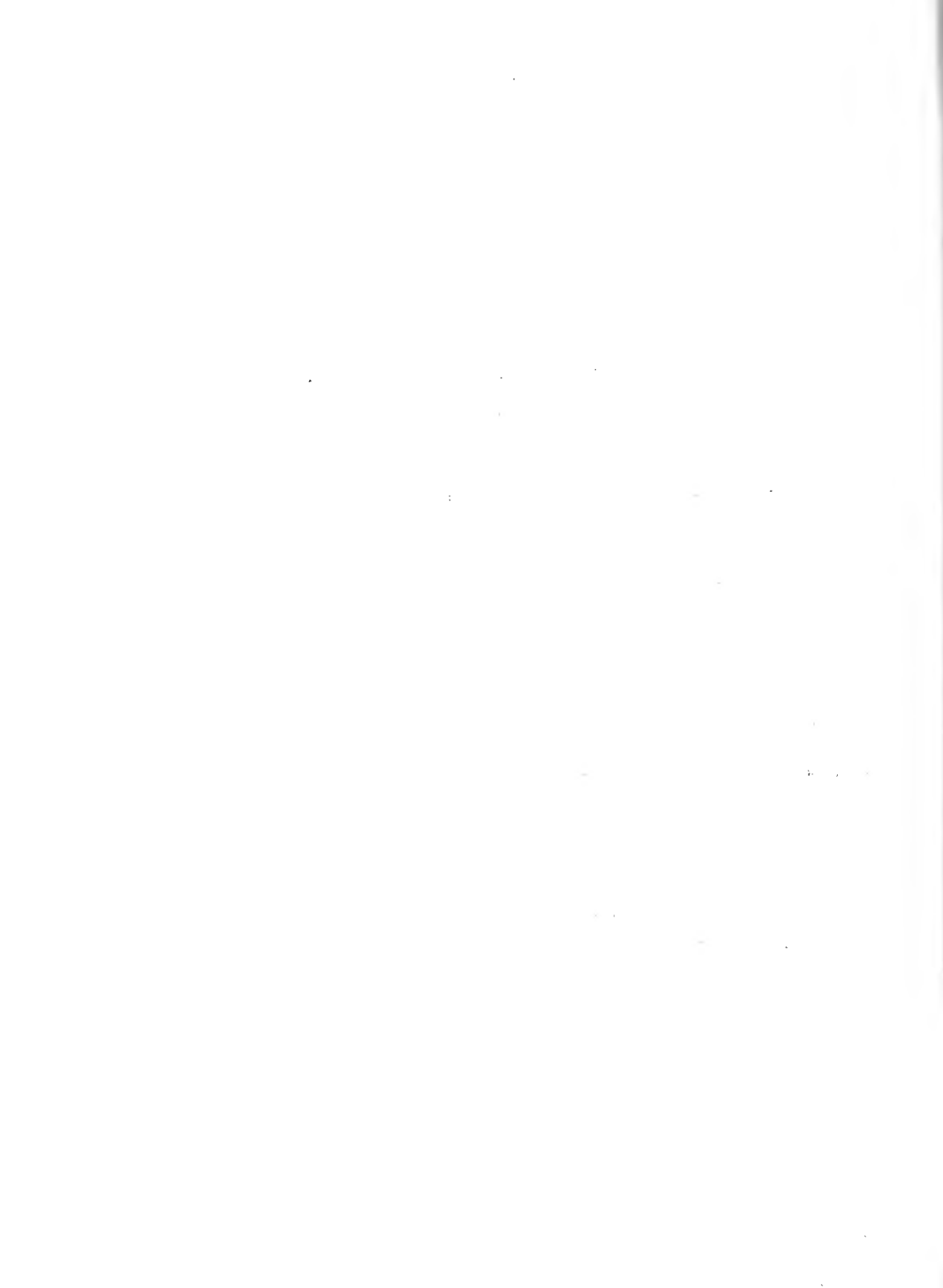
As the inner-city housing crisis worsens, we persist in the notion that the central city by itself must provide for the housing needs of ill-housed low-income families. We cling to this fallacy despite the reality that the central cities no longer have significant amounts of vacant land and no large supply of decent, available, low-cost relocation housing. We have, in short, adopted an approach to the city-housing problem that is guaranteed to fail. But there are answers.



There is an ample supply of vacant land suitable for housing low-income families in a ten-mile-wide belt around just about every one of our cities, except possibly New York and Los Angeles, where it may be necessary to go 20 miles or farther. Yet access to this land and the good schools, safe streets and open spaces that go with it has been denied to low-income families, and particularly black families, on a shockingly systematic basis. The noble tool of zoning has been perverted to 'maintaining the character' of affluent lily-white suburbs.

The proposition is simple: build housing for low-income families, in groups of 40 to 50 houses, on the ample vacant land in suburban locations by providing exemptions from local zoning ordinances that perpetuate exclusiveness.²⁷

Politicians and top U. S. officials and national magazines and dailies recognized the significance of this new approach. George Romney, Secretary, U. S. Department of Housing and Development, and his staff adopted Logue's and Davidoff's philosophies and proposals. In a January 1970 speech, Secretary Romney said that "every American is entitled to a decent home near his work and every American child is entitled to a quality school near his home".³¹ He continued that with Federal help, states and cities must end "mislocation of people in relationship to their jobs and daily activities to end our separation economically, socially and racially".³¹ As reported recently by the New York Times,²⁴ Secretary Romney said that the Nixon administration has proposed an enactment of a Federal law which will enable the construction of low income housing in the suburbs. The law will ban local restrictions based on zoning regulations and building codes. Similar statements by Romney's top aides appeared recently in magazines and news-



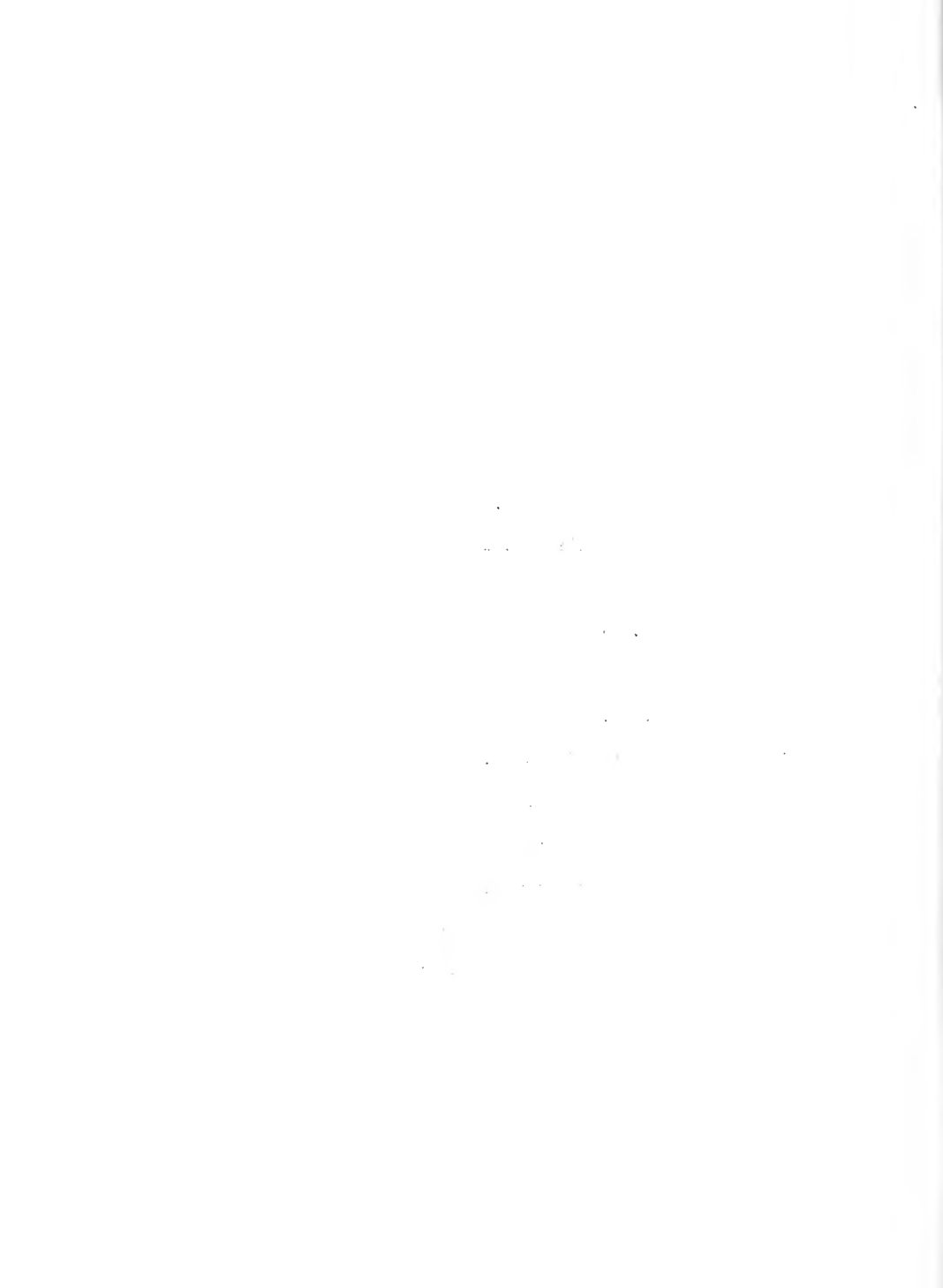
Federal and state governments are beginning to understand the social and economic and political significance of suburban zoning power. The 1969 Massachusetts Housing Act²⁸ is the first attempt by a state legislature to take over, or take away power from municipalities in order to abolish exclusionary and discriminatory zoning practices. The Urban Development Corporation of New York State established in 1968, has the legal authority to override local zoning restrictions when required.³⁵

The facts are, however, that the U. S. Government, including Congress and the Administration, has not undertaken as yet energetic action to remove restrictive zoning in suburbia. There has been no action whatsoever to withhold federal subsidies which flow to suburbia in federal funding of municipal utilities, mortgages, highways, etc. Effectiveness of such action is questionable anyway. (Yet, it would be a significant beginning.)

CONCLUSION

This article stated the case that restrictive suburban zoning has become a widely discussed public issue. Based on the investigated sources more than ample evidence is provided that elimination of restrictions from suburban zoning codes and ordinances should be attempted. Such action may well enable black and low-income white families to achieve decent housing, jobs and education for their children. It should be said that the exclusionary nature of suburban zoning may be fiscal by intention and not racial. Yet its effects are exclusionary, discriminatory and biased against the poor and the black.

The greatest beneficiaries of the suburban zoning battle raging now in the courts and in communication media may yet be land speculators and real estate developers. Until now zoning offered some protection to the community at large against entirely speculative housing schemes which could damage the structure and the quality of the whole community. Recent rulings by



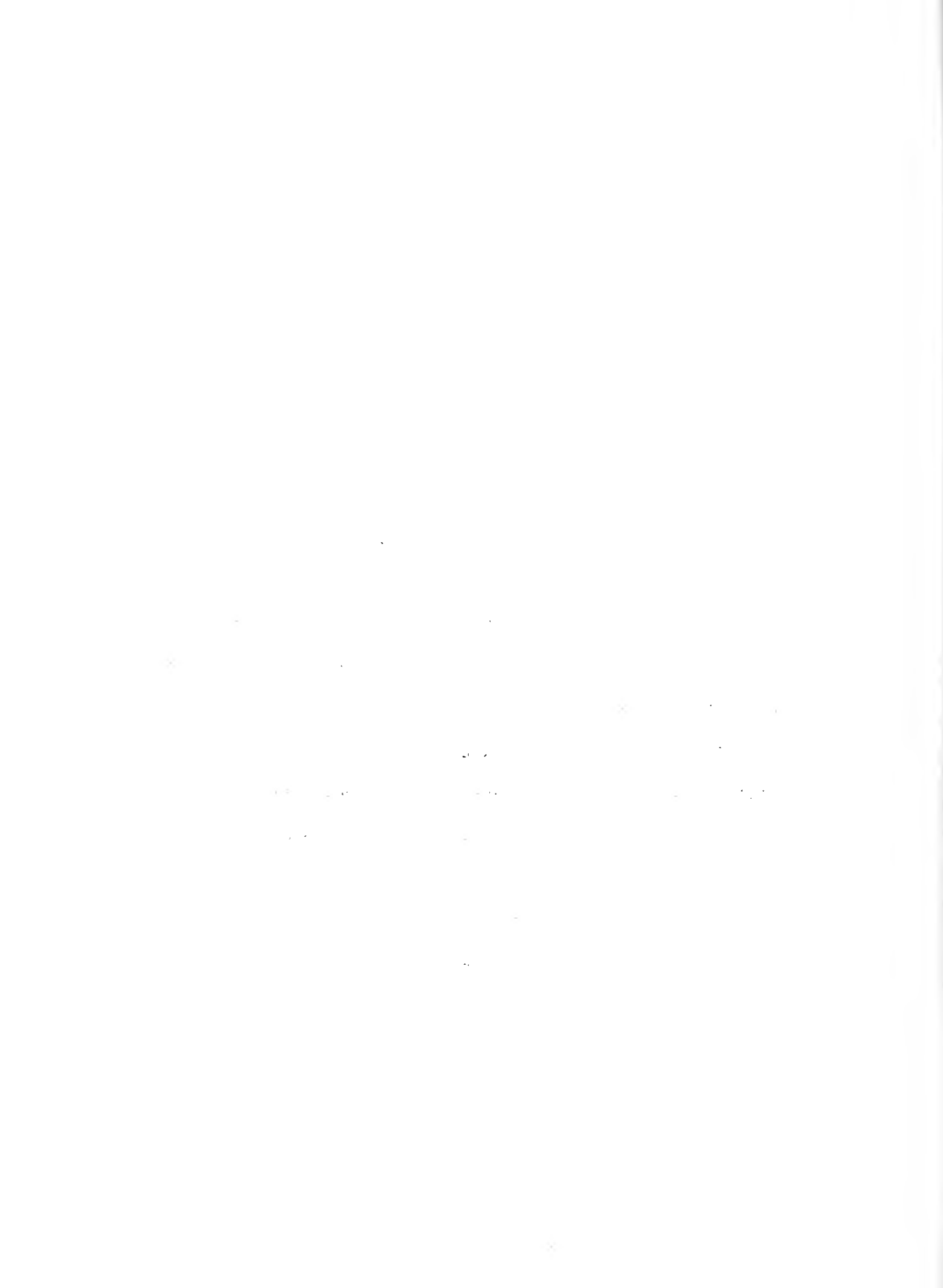
the courts may be opening a Pandora's box. According to the 1970 article "Zone Rule Voided by Pennsylvania"³⁰ "...the constitutional concern of the Pennsylvania Supreme Court is that property was being taken without due process, and not that low-income persons were being excluded arbitrarily. "...It's a property-oriented court. They care very much about property rights and constitutional rights of owners."³⁰ Thus, instead of providing jobs, decent housing and education to the underprivileged, courts may enable land speculators and developers to reap enormous profits by breaking up decent community designs.

The U. S. Government has not acted on its own recommendations suggested in its publication, Building the American City.⁶ The following are several quotes from the book:

The Commission recommends that State governments amend State planning and zoning enabling acts to include as one of the purposes of the zoning power the provision of adequate sites for housing persons of all income levels and to require that governments exercising the zoning power prepare plans showing how the community proposes to carry out such objectives in accordance with county or regional housing plans, so that within the region as a whole adequate provision of sites for all income levels is made.

The Commission recommends that the States adopt resolutions making it official State policy to encourage the provision of housing for employees of all income levels in areas reasonably close to places of employment.⁶

What about urban planning and the urbanist professions? Herbert Gans' brilliant and eloquent statement in the July 1970 issue of the Journal of the American Institute of Planners³⁸ postulates the activities of the profession:



I would suggest, however, that in the past, the profession was not really planning, but advocating an ideal urban community and that only now is it learning to plan.

The physical planners who made master plans and zoning ordinances were actually trying to create the City Orderly. Efficient, and Beautiful--with growth controlled, land uses separate, low status uses removed, and vast amounts of open space and 'wholesome recreation' facilities added. However, these 'urbanists' were not planning, for they rarely asked what goals their policies were supposed to achieve, whether the policies were effective, or what consequences would result.³⁸

In fact the urbanologist, land use and urban renewal planners condoned for 20 years the practices of restrictive zoning in suburbia on one hand and practiced cataclysm resulting in havoc and destruction in the central cities on the other. Urban renewal and highway construction are the best-known "cures" for all urban ills.

Naturally, the removal of restrictions in suburban zoning should be supported unconditionally in spite of criticisms and objections.

Nevertheless, the pre-occupation with and concentration on improvements in using zoning as a social instrument to eliminate the causes of America's urban problems is a grave fallacy; we are deluding ourselves. We are committing the same tragic errors as we have in the last two decades in urban renewal and housing. Elimination of restrictive zoning practices only will not be sufficient. The solution lies in the metamorphosis of American suburbia into a healthy, integrated multi-racial, multi-income heterogeneous community. The barricades which separate the two main camps have to go.

1. The first part of the paper is devoted to the study of the properties of the function $f(x)$ defined by the equation

$$f(x) = \int_0^x \frac{1}{1+t^2} dt$$

It is shown that the function $f(x)$ is increasing and concave down on the interval $(-\infty, \infty)$. Moreover, the function $f(x)$ is bounded on the interval $(-\infty, \infty)$ and its range is the interval $(-\frac{\pi}{2}, \frac{\pi}{2})$.

2. In the second part of the paper, we study the properties of the function $g(x)$ defined by the equation

$$g(x) = \int_0^x \frac{1}{1+t^4} dt$$

It is shown that the function $g(x)$ is increasing and concave down on the interval $(-\infty, \infty)$. Moreover, the function $g(x)$ is bounded on the interval $(-\infty, \infty)$ and its range is the interval $(-\frac{\pi}{4}, \frac{\pi}{4})$.

3. In the third part of the paper, we study the properties of the function $h(x)$ defined by the equation

$$h(x) = \int_0^x \frac{1}{1+t^6} dt$$

It is shown that the function $h(x)$ is increasing and concave down on the interval $(-\infty, \infty)$. Moreover, the function $h(x)$ is bounded on the interval $(-\infty, \infty)$ and its range is the interval $(-\frac{\pi}{6}, \frac{\pi}{6})$.

4. In the fourth part of the paper, we study the properties of the function $k(x)$ defined by the equation

$$k(x) = \int_0^x \frac{1}{1+t^8} dt$$

It is shown that the function $k(x)$ is increasing and concave down on the interval $(-\infty, \infty)$. Moreover, the function $k(x)$ is bounded on the interval $(-\infty, \infty)$ and its range is the interval $(-\frac{\pi}{8}, \frac{\pi}{8})$.

The issue of zoning cannot be separated from other urban issues. A totally unified over-all effort, a "comprehensive" effort, as the worn out term of the urbanist calls it, is required. New policies sanctified by U. S. legislative acts are needed to concentrate on such issues as national urban policy, including land policy, a reformed standard land tax system, a standard federal education system, national, state and local proportional elective system and guaranteed employment and income. Moreover, a solution to American urban social ills will, hopefully, eliminate social defects, including defects in zoning.

As in the past, we try to remedy the symptoms. Restrictive zoning is a symptom of our society's deficiencies. As such, it is being made the scapegoat of most urban ills. The roots of evil, however, are not in the institution of zoning; they are in the social establishment of white suburbia. Like desegregation of schools or bussing, elimination of restrictive zoning is an enlightened moral aim. Its achievement may pacify the troubled conscious of some liberal city and social planners but will not rescue the central cities.

It is necessary for the urban professions to take notice now, immediately. The American urban planner is already sidetracked. His position may offer him a decent livelihood; but that is all. His influence is waning; his frustrations are increasing and his credibility among other professionals and intellectuals is in a steady decline. His futility is most evident in the case of suburban zoning.

The urbanist is a dedicated professional. He is an idealist. By building better cities, he envisions a better life for all its inhabitants. Yet, in the last twenty years he attempted to solve urban social ills by concentrating on changes and improvements within the boundaries of the central city. The effect was a catastrophe. Now the new battle cry is



the "liberated" suburb. Is this the answer? Should he "march" behind that banner? Should he "liberate"? Should he, in the case of restrictive zoning, speak up for, against, or stand aside? Should he learn from and admit his past errors or should he pretend that nothing happened? This is the new test for the urbanist professions! No matter what the decision, the profession must stand up and take a position.



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